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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Albania,* Andorra,* Australia, Austria,* Belgium, Bulgaria,* Canada,* Croatia, Cyprus,* Czechia,* Denmark,* Estonia,* Finland,* France,* Germany, Greece,* Hungary, Iceland, Ireland,* Italy,* Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Malta,* Monaco,* Montenegro,* Netherlands,* New Zealand,* Norway,* Pakistan,† Poland,* Portugal,* Romania,* Slovakia, Slovenia, Spain, Sweden,* the former Yugoslav Republic of Macedonia,* Ukraine, United Kingdom of Great Britain and Northern Ireland: draft resolution

39/... Situation of human rights of Rohingya Muslims and other minorities in Myanmar

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights, and recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Right of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination, and other relevant international human rights law,

Recalling relevant resolutions of the General Assembly and the Human Rights Council, the most recent being Assembly resolution 72/248 of 24 December 2017 and Council resolutions 29/21 of 3 July 2015, 34/22 of 24 March 2017, S-27/1 of 5 December 2017 and 37/32 of 23 March 2018, and Council decision 36/115 of 29 September 2017,

Welcoming the work of the independent international fact-finding mission on Myanmar and its oral updates to the Human Rights Council, while deeply regretting that the Government of Myanmar has not cooperated with the fact-finding mission, and urging the Government to grant it full, unrestricted and unmonitored access to all areas and interlocutors,

Welcoming also the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, deeply regretting the decision of the Government of

* State not a member of the Human Rights Council.

† On behalf of the States Members of the United Nations that are members of the Organization of Islamic Cooperation.

Myanmar to discontinue cooperation with the Special Rapporteur and to deny her access to Myanmar since January 2018, and calling upon the Government to resume its cooperation with the Special Rapporteur without delay,

Welcoming further the appointment by the Secretary-General of a special envoy, the cooperation of the Government of Myanmar with the special envoy and the agreement on the opening of an office in Nay Pyi Taw, and commending the work of the special envoy since her nomination, including her recent visits to the region and the her consultations with a range of interlocutors,

Welcoming the cooperation extended by the Government of Bangladesh, allowing in this context the Special Rapporteur to visit the country from 29 June to 8 July 2018, while reaffirming the importance of cooperation with the Government of Myanmar in taking all necessary measures to promote and protect human rights in its territory without any discrimination,

Expressing deep concern about the ongoing non-cooperation of the Government of Myanmar and its denial of access to the fact-finding mission and the Special Rapporteur,

Expressing deep concern also that, despite the signing of the bilateral instruments between Bangladesh and Myanmar and the subsequent formation of the Joint Working Group on the Repatriation of Displaced Myanmar Residents from Bangladesh, no displaced Rohingya person has been able to return to Myanmar to date owing to the fact that no visible effort has been made to create a conducive environment for the safe, voluntary, dignified and sustainable return of displaced Rohingya, including assurance of non-occurrence of violence, assurance on rights, including citizenship and mobility, or assurance of accountability of perpetrators and justice for victims, and owing also to the very slow verification process of the list of intended returnees handed over to Myanmar,

Expressing concern at the reports of continued intimidation and violence against the remaining Rohingya Muslim population and other minorities in Myanmar,

Recognizing the initial steps taken by the Government of Myanmar to address the underlying causes of the situation in Rakhine State, including the setting up of the Central Committee for the Implementation of Peace, Stability and Development in Rakhine State and the Advisory Commission on Rakhine State, established on 5 September 2016 at the behest of the State Counsellor of Myanmar, Daw Aung San Suu Kyi, and chaired by former Secretary-General Kofi Annan, while regretting that the Government has not yet fully implemented all recommendations of the Advisory Commission on Rakhine State,

Acknowledging the establishment of an independent commission of enquiry by the Government of Myanmar on 30 July 2018 as a step towards ensuring accountability for the gross human rights violations and abuses committed in Rakhine State, and expressing hope that the commission of enquiry, unlike previous national investigative mechanisms, will be able to work with independence, transparency and objectivity,

Acknowledging with grave concern the statements made by the Secretary-General on 26 February 2018, the United Nations High Commissioner for Human Rights on 7 March 2018 and the Assistant Secretary-General for Human Rights on 6 March 2018, as well as by the Secretary-General of the Organization of Islamic Cooperation on 27 February 2018, on the situation of human rights in Rakhine State, in which they referred to ethnic cleansing in Myanmar, and recalling resolution 59/45-POL of the Organization of Islamic Cooperation adopted by the Council of Foreign Ministers at its forty-fifth session on the establishment of an ad hoc ministerial committee on accountability for human rights violations against the Rohingya, and the recommendations made by the participants in the international consultation meeting on the Rohingya crisis, held on 6 July 2018 in Ankara,

Acknowledging the request made by the High Commissioner during the thirty-eighth session of the Human Rights Council on the situation of human rights of the Rohingya population and other minorities in the Rakhine State of Myanmar, that the Council, in view of the scale and gravity of the allegations, consider making a recommendation to establish a new impartial and independent mechanism, complementary to the work of the fact-finding mission,

Stressing that States have the primary responsibility to respect, protect and fulfil human rights,

Reiterating the urgent need to ensure that all those responsible for crimes related to violations and abuses of international human rights law are held to account through credible and independent national or international criminal justice mechanisms, while recalling the authority of the Security Council to refer the situation in Myanmar to the International Criminal Court,

Recalling the responsibility of States to comply with their relevant obligations to prosecute those responsible for violations of international law, including international humanitarian law, international human rights law and international refugee law, and for abuses of human rights law, and to provide an effective remedy to any person whose rights have been violated, with a view to end impunity,

1. *Expresses grave concern* at the findings of the independent international fact-finding mission that there is sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command so that a competent court may determine their liability for genocide in relation to the situation in Rakhine State, and that crimes against humanity and war crimes have been committed in Kachin, Rakhine and Shan States, including murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, persecution and enslavement, and that children were subjected to, and witnessed, serious human rights violations, including killing, maiming and sexual violence, as part of a widespread and systematic attack on a civilian population warranting criminal investigation and prosecution, and that the military has consistently failed to respect international human rights law and international humanitarian law;

2. *Strongly condemns* all violations and abuses of human rights in Myanmar, as set out in the report of the fact-finding mission,[1] including widespread, systematic and gross human rights violations and abuses committed in Rakhine State, including the presence of elements of extermination and deportation and systematic oppression and discrimination, which may amount to persecution and to the crime of apartheid, also strongly condemns the disproportionate response of the military and the security forces, deplores the serious deterioration of the security, human rights and humanitarian situation, the exodus of more than 723,000 Rohingya Muslims and other minorities into Bangladesh and the subsequent depopulation of northern Rakhine State, and calls upon the Myanmar authorities to ensure that those responsible for violations of international law, including human rights violations and abuses, are held accountable;

3. *Calls for* a full and independent investigation of the reports of systematic and widespread human rights violations and abuses committed, as reported by various United Nations bodies, including the Human Rights Council, the fact-finding mission and the Special Representative of the Secretary-General on Sexual Violence in Conflict;

4. *Calls upon* the Government of Myanmar to ensure the protection of the human rights of all persons in Myanmar, including of Rohingya Muslims and other minorities;

5. *Also calls upon* the Government of Myanmar to take all measures necessary to ensure accountability and to end impunity for all violations of human rights by undertaking a full, transparent and independent investigation into reports of all violations of international human rights law and international humanitarian law;

6. *Further calls upon* the Government of Myanmar to grant full, unrestricted and unmonitored access for the fact-finding mission, other human rights mechanisms and relevant United Nations agencies, as well as for relevant international and regional human rights bodies, including the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation, and to ensure that all individuals have unhindered

[1] A/HRC/39/64.

access to and can communicate with the United Nations and other human rights entities without fear of reprisal, intimidation or attack;

7. *Welcomes* the holding of the third session of the Twenty-first Century Panglong Conference from 11 to 16 July 2018 and the progress made towards the principles of a future democratic federal union of Myanmar, while calling for further steps, including an immediate cessation of fighting and hostilities, of targeting civilians and of all violations and abuses of international human rights law and international humanitarian law in northern Myanmar, and of the harassment, intimidation, arrest, detention and prosecution of human rights defenders and activists demonstrating for peace, the provision of immediate, safe and unhindered humanitarian access, including to areas controlled by ethnic armed groups, in particular in Kachin and Shan States, and the implementation of an inclusive and comprehensive national political dialogue ensuring the full, effective and meaningful participation of all ethnic groups, women and young people, and persons with disabilities, as well as civil society, with the objective of achieving lasting peace;

8. *Calls upon* the Government of Myanmar to take the measures necessary to address the spread of discrimination and prejudice and to combat the incitement to hatred against Rohingya Muslims and other minorities by publicly condemning such acts and enacting necessary anti-hate speech laws, in accordance with international human rights standards, and by promoting interfaith dialogue in cooperation with the international community, and encourages political and religious leaders in the country to work towards national unity through dialogue;

9. *Also calls upon* the Government of Myanmar to make efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, in particular relating to the Rohingya Muslims, by, inter alia, reviewing the 1982 Citizenship Law, which has led to deprivation of human rights; by ensuring equal access to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights by allowing for self-identification; by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control; and by lifting all local orders restricting rights to freedom of movement and access to civil registration, health and education services and livelihoods;

10. *Strongly urges* the Government of Myanmar to take all measures necessary to implement fully all recommendations made by the Advisory Commission on Rakhine State;

11. *Notes with concern* the continued departure of members of the remaining Rohingya population and other minorities for Bangladesh, strongly urges the Government of Myanmar and the armed forces to lift the curfew order in Rakhine State, in particular to ensure freedom of movement and the safety and security of all persons without discrimination, and to put an end to extortion against and the intimidation of the Rohingya population;

12. *Calls upon* the Government on Myanmar to allow free and unhindered access for local and international staff of humanitarian and other relevant international agencies to provide humanitarian assistance, including gender-responsive assistance, and encourages the granting of access for the diplomatic corps, independent observers and representatives of the national and international independent media, without fear of reprisal, and to safeguard those who report abuses;

13. *Stresses* the need for the creation of the conditions for the safe, voluntary, dignified and sustainable return of Rohingya refugees from Bangladesh to their places of origin, offering dignified solutions to displacement, in consultation with the populations concerned and in accordance with international law and standards, with international oversight and monitoring with the free and informed participation of refugee communities;

14. *Strongly calls upon* the Government of Myanmar to expedite the safe, voluntary, dignified and sustainable return of all internally displaced persons in conditions of safety and dignity to their homes in Myanmar, including the approximately 120,000 internally displaced Rohingya and Kaman persons currently in camps near Sittwe in central

Rakhine since 2012 by offering dignified solutions to displacement, in consultation with the populations concerned and in accordance with international law and standards;

15. *Call upon* the Government of Myanmar to provide any returnees with freedom of movement, unimpeded access to livelihoods, social services, including health services, education and shelter, and compensation for all losses;

16. *Calls upon* the United Nations and encourages other international agencies to provide all support necessary for the Governments of Bangladesh and Myanmar to expedite the safe, voluntary, dignified and sustainable return of forcibly displaced Rohingya Muslims and other minorities from Myanmar, including internally displaced persons, including through the early implementation of the memorandum of understanding signed by the Government of Myanmar, the Office of the United Nations High Commissioner for Refugees and the United Nations Development Programme;

17. *Urges* the Government of Myanmar to take all measures necessary to reverse and abandon policies, directives and practices that marginalize Rohingya Muslims and other minorities economically, to prevent the destruction of places of worship, cemeteries, infrastructure and commercial or residential buildings belonging to all peoples, and to ensure that displaced Rohingya Muslims and other minorities in Rakhine State do not lose their rights to their homes and properties, including by reviewing relevant laws, and to address the root causes of their vulnerability and forced displacement;

18. *Expresses grave concern* that the journalists Wa Lone and Kyaw Soe Oo, who were investigating the Inn Dinn killings, have been jailed, prosecuted and sentenced, and calls for their immediate and unconditional release, and calls upon the Government of Myanmar to allow unhindered access of journalists throughout Myanmar, in particular in Rakhine, Kachin and Shan States;

19. *Welcomes* the signing by the Governments of Myanmar and Bangladesh of an arrangement on the return of displaced persons from Rakhine on 23 November 2017 and of a physical arrangement for the repatriation of displaced Myanmar residents from Bangladesh on 16 January 2018 as important first steps towards the safe, voluntary, dignified and sustainable return and repatriation of Rohingya refugees, and acknowledges the cooperation of Bangladesh with the Office of the United Nations High Commissioner for Refugees, while urging all parties to invite the Office of the High Commissioner, the International Organization for Migration and other relevant international organizations to fulfil their mandates and to participate fully in the work of the Joint Working Group on the Repatriation of Displaced Myanmar Residents from Bangladesh and to ensure the transparent, effective and sustainable implementation of the returns process, in accordance with international law and with the free and informed participation of refugee communities;

20. *Acknowledges* the signing of a memorandum of understanding on 6 June 2018 by the Government of Myanmar, the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees and the creation of a technical working group to oversee implementation as an important and necessary step to create conditions for the safe, voluntary and dignified return of refugees from Bangladesh, and encourages the immediate publication of the memorandum;

21. *Also acknowledges* the establishment of an independent commission of enquiry by the Government of Myanmar on 30 July 2018, and calls for its close cooperation with all United Nations bodies and mandates, in particular the independent international fact-finding mission and the Special Rapporteur on the situation of human rights in Myanmar to ensure that all those responsible for crimes involving violations of international law, including violations and abuses of international human rights law, such as conflict-related sexual and gender-based violence and the attacks on children perpetrated during the military "clearance" operations in northern Rakhine State, are held to account;

22. *Decides* to establish an ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals

that have or may in the future have jurisdiction over these crimes, in accordance with international law;

23. *Also decides* that the mechanism shall:

(a) Be able to make use of the information collected by the fact-finding mission and continue to collect evidence;

(b) Have the capacity to document and verify relevant information and evidence, including through field engagement and by cooperating with other entities, as appropriate;

(c) Report on its main activities on an annual basis to the Human Rights Council as of its forty-second session and to the General Assembly as of its seventy-fourth session;

24. *Takes note* of the International Criminal Court Pre-Trial Chamber's ruling that it may exercise jurisdiction over the deportation of the Rohingya people from Myanmar to Bangladesh, and requests the mechanism to cooperate closely with any of its future investigations pertaining to human rights violations in Myanmar;

25. *Requests* the Secretary-General to appoint of the staff of the mechanism as expeditiously as possible, taking into account the experience of other relevant mechanisms, and to recruit or allocate impartial and experienced staff with relevant skills and expertise, drawing upon terms of reference prepared by the United Nations High Commissioner for Human Rights;

26. *Calls upon* all States, including the Government of Myanmar and its independent commission of enquiry, and encourages civil society, business enterprises and other relevant stakeholders to cooperate fully with the mechanism to effectively fulfil its mandate and, in particular, to provide it with any information and documentation they may possess or come to possess, as well as any other forms of assistance pertaining to their respective mandate;

27. *Requests* the United Nations system as a whole to cooperate fully with the mechanism and to respond promptly to any request made by the mechanism, including access to all information and documentation;

28. *Requests* the Secretary-General to allocate the resources necessary for the implementation of the present resolution, including the logistical and technical resources necessary to support the functioning of the mechanism;

29. *Encourages* the General Assembly to consider taking further action to address the serious human rights violations committed in Myanmar, particularly in Rakhine, Shan and Kachin States, as documented in the final report of the fact-finding mission,[1] and to seriously consider the recommendations contained therein and to pay due regard to the establishment of the mechanism;

30. *Decides* to extend the mandate of the independent international fact-finding mission, established by the Human Rights Council in its resolution 34/22, until the new mechanism is operational to ensure that the large and continually increasing amount of evidence of human rights violations and abuses it has collected is fully documented, verified, consolidated and preserved in order for the material to be effectively shared, accessed and used by the mechanism, and requests the fact-finding mission to submit a final report on its main activities to the Council at its forty-second session;

31. *Requests* the United Nations High Commissioner for Human Rights to present a written report, to be followed by an interactive dialogue, to the Human Rights Council at its forty-third session, on the root causes of the human rights violations and abuses the Rohingya Muslim minority and other minorities in Myanmar are facing, including discrimination, racial intolerance and xenophobia and Islamophobic practices, in violations of international human rights law and contrary to international declarations, including but not limited to the Durban Declaration and Programme of Action, and to recommend concrete measures to be taken by the Government of Myanmar and the international community to address the current situation;

32. *Encourages* the United Nations system to give due consideration to the recommendation by the fact-finding mission on conducting a comprehensive, independent

inquiry into the involvement of the United Nations in Myanmar since 2011 with a view to establishing whether everything possible to prevent or mitigate the unfolding crises was done, identifying lessons learned and good practices, making recommendations as appropriate, including on accountability, and enabling more effective work in future;

33. *Appeals* to all States, international agencies and other donors to step up support for victims, including support for refugees, displaced persons and host communities, possibly through the establishment of a trust fund to address their needs, including the needs of those who have been victims of sexual violence, as well as child victims and witnesses.